

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Atty Dkt. 2111-15

SEIDEL

C# M#

Serial No. 09/600,260

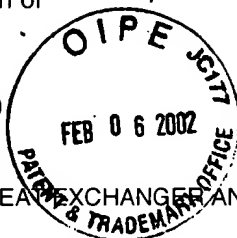
Group Art Unit: 3743

Filed: July 13, 2000

Examiner: C. Atkinson

Date: February 6, 2002

Title: FLAT PLATE HEAT EXCHANGER AND FLAT PLATE THEREFOR

Assistant Commissioner for Patents
Washington, DC 202313743

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FEB 11 2002
TECHNOLOGY CENTER R3700

Sir:

RESPONSE

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

Fees are attached as calculated below:

Total effective claims after amendment 0 minus highest number
previously paid for 20 (at least 20) = 0 x \$ 18.00 \$ 0.00

Independent claims after amendment 0 minus highest number
previously paid for 3 (at least 3) = 0 x \$ 84.00 \$ 0.00

If proper multiple dependent claims now added for first time, add \$280.00 (ignore improper) \$ 0.00

Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s) (\$110.00/1 month; \$400.00/2 months; \$920.00/3 months) \$ 920.00

Terminal disclaimer enclosed, add \$ 110.00 \$ 0.00

☐ First/second submission after Final Rejection pursuant to 37 CFR 1.129(a) (\$740.00) \$ 0.00

☐ Please enter the previously unentered, filed

☐ Submission attached

Subtotal \$ 920.00

If "small entity," then enter half (1/2) of subtotal and subtract -\$ 460.00

☐ Applicant claims "small entity" status. ☐ Statement filed herewith

Rule 56 Information Disclosure Statement Filing Fee (\$180.00) \$ 0.00

Assignment Recording Fee (\$40.00) \$ 0.00

Other: 0.00

TOTAL FEE ENCLOSED \$ 460.00

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140. A duplicate copy of this sheet is attached.

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NIXON & VANDERHYE P.C.
By Atty: Larry S. Nixon, Reg. No. 25,640

Signature: 



UNITED STATES PATENT AND TRADEMARK OFFICE

#5
2/11/02

In re Patent Application of

SEIDEL

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Serial No. 09/600,260

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For: FLAT PLATE HEAT EXCHANGER AND FLAT PLATE THEREFOR

* * * * *

February 6, 2002

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

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RESPONSE

This paper is in response to the Office Action mailed October 12, 2001.

Simultaneously herewith, applicant has requested a three month extension of time to extend the time for responding from November 12, 2001 until February 12, 2002;.

In response to the outstanding restriction requirement, applicant herewith provisionally elects the species of Figures 1B-2B and the corresponding claims readable thereon 1-4, 10, 11-14 and 20.

The restriction requirement also is hereby traversed.

Contrary to the examiner's assertion, separate species are not disclosed in this application. Instead, applicant has disclosed and claimed a new and unique invention of a

heat plate heat exchanger. Claims 1 and 11 are the only independent claims and the other claims are dependent from these two claims. As is customary and acceptable in applications for mechanical inventions, the invention has been recited in varying breadths in the claims. Dependent claims are used to recite additional limitations. The fact that the invention is described in varying degrees of breadth does not mean that there are multiple species. Multiple species are not disclosed -- only a single unitary invention is disclosed.

Claims 1 and 11 are the main independent claims, and they and dependent claims 2-3, 10, 12-14 and 20 have been elected, as being readable on Figures 1B-2B. Then, in succeeding claims, further elements are added, as is the purpose of dependent claims. Claim 5 refers to the plate member being formed from "folded sheeting," claim 6 adds "a fixator member," claim 7 is like claim 5 and adds a "locking member," claim 8 adds that "said at least one resilient member includes a pair of resilient members," and, claim 9 refers to the resilient members being symmetrical." Claims 15-19 parallel claims 5-9, but are dependent from claim 11, instead of claim 1.

It is hard to understand how both independent claims are part of the same "species" for purposes of the election, but the dependent claims are not.

As provided by statute:

"A claim may be written in independent or, if the nature of the case admits, in dependent...form.

"...a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." 35 U.S.C. §112.

This is what applicant has done. Each of the dependent claims includes all of the limitations of the preceding claims in the chain, and then adds "a further limitation."

"35 U.S.C. 121 quoted in the preceding section states that the Commissioner may require restriction if two or more "independent and distinct" inventions are claimed in one application..

" 'Independent' ", of course means not dependent. ...

"The term 'independent' (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect...

"The term 'distinct' means that two or more subjects as disclosed are related... but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER..." M.P.E.P. ¶ 802.01 (7th ed. July 1998).

Surely, the subject matters of the dependent claims are not "independent," as there is a disclosed relationship; they are connected in "design, operation, or effect." the subject matters are also not distinct, as they are not capable of separate manufacture, use or sale and they may not be patentable over each other.

"Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, **restriction therebetween should never be required**. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition. (Emphasis added) M.P.E.P. ¶ 806.03 (7th ed. July 1998).

That is the case here. The claims define the same essential characteristics of a single embodiment, as claimed in claims 1 and 11, and the dependent claims are different definitions, varying in breadth.

SEIDEL

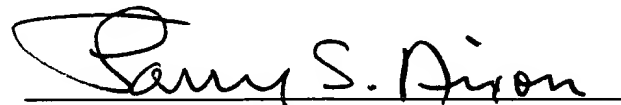
Serial No. 09/600,260

Therefore, it is believed that restriction is not appropriate in this application and all the subject matter of all the drawings and all the claims should be considered in this single application. It is respectfully urged that the restriction requirement be withdrawn.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



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